

General Information Letter: Foreign tax credit is not allowed for use taxes or other taxes not imposed on or measured by income.

August 20, 2001

Dear:

This is in response to your letter dated August 13, 2001, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

I am a 1040 Illinois software developer for xxx and need to confirm in writing what should be included in income and taxes from other states to calculate Credit for Taxes Paid on Schedule CR. It seems that our current computations are slightly different than what Sherri Hoff (Illinois Department of Revenue) said should be computed.

According to my phone conversation with Sherri Hoff, income from other states should be the total income (before exemptions) minus all deductions allowed in the other state. Therefore, exemptions should not be subtracted out from income for purposes of Schedule CR.

Also, Sherri said that tax paid to other states should be the income tax computed for the state (not including non-income tax such as lump sum and use tax) minus credits allowed in the other state.

## **Response**

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) provides:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year.

Under this provision, only the amount of tax "imposed upon or measured by income" and "paid by a resident" qualifies for the credit. Accordingly, use taxes and other taxes not imposed on or measured by income do not qualify. Also, a credit that reduces the amount of tax actually paid necessarily reduces the amount of credit available.

The limitation on the amount of the credit is based on "base income" subject to tax in both Illinois and another state. "Base income" is the "net income" on which Illinois income tax is imposed, before exemptions are taken into account. See Section 202 of the Illinois Income Tax Act (35 ILCS 5/202). Accordingly, exemptions allowed by another state do not reduce the amount of "base income" subject to tax in that state for purposes of computing this limitation.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel -- Income Tax